

THOMAS K. GODFREY
Assistant U.S. Attorney
U.S. Attorney's Office
James F. Battin U.S. Courthouse
2601 Second Ave. North, Suite 3200
Billings, MT 59101
Phone: (406) 657-6101
FAX: (406) 657-6989
Email: Thomas.Godfrey@usdoj.gov

ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. KYLE RICHARD LEWELLEN, Defendant.	CR 23-07-BLG-SPW OFFER OF PROOF
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The United States, represented by Assistant U.S. Attorney Thomas K. Godfrey, files the following offer of proof.

THE CHARGES

The defendant is charged by indictment with the following counts: Count 1: conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. § 846; and Count 2: possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841.

PLEA AGREEMENT

There is a plea agreement in this case. The defendant will plead guilty to Count 1 of the indictment. The plea agreement contains the GLACIER program terms. At the time of sentencing the United States will dismiss the remaining count in the indictment. In the government's view, this is the most favorable resolution for the defendant. *See Missouri v. Frye*, 566 U.S. 134, 145-46 (2012).

ELEMENTS OF THE CHARGES

In order for the defendant to be found guilty of conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. § 846, the United States must prove each of the following elements beyond a reasonable doubt:

First, there was an agreement between two or more persons to possess methamphetamine with the intent to distribute; and

Second, the defendant entered the agreement knowing of its objectives and intending to accomplish at least one of those objectives.

Additionally, while not a formal element of the offense, the United States would also have to prove beyond a reasonable doubt the defendant's involvement in the conspiracy involved greater than 50 grams of a substance containing a detectable amount of methamphetamine.

PENALTIES

The count in the indictment carries a mandatory minimum punishment of five years to a forty years of life imprisonment, a \$5,000,000 fine, at least four years of supervised release, and a \$100 special assessment.

ANTICIPATED EVIDENCE

If this case were tried in United States District Court, the United States would prove the following:

Beginning in March of 2020 the ATF and Park County began investigating the defendant for distributing methamphetamine in Livingston and elsewhere in Montana with James Murrieta and Oscar Nevarez. Murrieta and Nevarez have previously pled guilty to methamphetamine trafficking and have been sentenced.

Law enforcement obtained the data from the phones of the defendant and his co-conspirators. There were text messages in the time period of the indictment between the defendant and his co-conspirators discussing methamphetamine trafficking as well as using the trunk lining in the defendant's vehicle as a place to hide drugs while transporting them. In those exchanges the defendant offered to flip any drugs that Murrieta could front him quickly. He also negotiated the price of ounces of methamphetamine in coming shipments.

On September 20, 2022, James Murrieta was interviewed by law enforcement. He described how, during the time period in the indictment, Nevarez

would use the defendant's car for methamphetamine trafficking and how the defendant would wire him and Nevarez money for ounces of methamphetamine.

On November 15, 2022, Oscar Nevarez was interviewed by law enforcement. He described "renting" the defendant's car for drug runs and that he would pay the defendant an ounce of methamphetamine in exchange. Nevarez stated this happened approximately 10 times.

The amount of methamphetamine involved in the conspiracy attributable to the defendant was greater than 50 grams of a substance containing a detectable amount of methamphetamine.

DATED this 2nd day of November, 2023.

JESSE A. LASLOVICH
United States Attorney

/s/ Thomas K. Godfrey
THOMAS K. GODFREY
Assistant U.S. Attorney